

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA and NEW YORK  
STATE *ex rel.* MICHAEL QUARTARARO,

Plaintiff,

**ORDER**

12-CV-4425 (MKB) (RML)

v.

CATHOLIC HEALTH SYSTEM OF LONG  
ISLAND INC. *d/b/a/* CATHOLIC HEALTH  
SERVICES OF LONG ISLAND, ST. CATHERINE  
OF SIENA MEDICAL CENTER, and ST.  
CATHERINE OF SIENA NURSING HOME,

Defendants.

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MARGO K. BRODIE, United States District Judge:

Plaintiff-Relator Michael Quartararo (“Relator”), a former nursing home administrator, commenced the above-captioned *qui tam* action on September 5, 2012, against Defendants Catholic Health System of Long Island, Inc., doing business as Catholic Health Services of Long Island (“CHS”), St. Catherine of Siena Medical Center (the “Medical Center”), and St. Catherine of Siena Nursing Home (the “Nursing Home”) under the federal False Claims Act, 31 U.S.C. § 3729 *et seq.* (the “FCA”), and the New York False Claims Act, N.Y. Finance Law § 187 *et seq.* (the “NYFCA”). (Compl., Docket Entry No. 1; Fourth Am. Compl. (“FAC”), Docket Entry No. 47.)

On August 10, 2018, the Court denied Defendants’ motion to dismiss the FAC and motion for partial summary judgment as to Relator’s misappropriation claims<sup>1</sup> alleging

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<sup>1</sup> In the March 31, 2017 Memorandum and Order, the Court defined misappropriation claims as those claims alleging violations of the FCA based on allegations that Defendants (1) unlawfully used a mitigation payment for purposes unrelated to Medicare and Medicaid; and (2)

violations of the FCA based on alleged violations of the Benefits Conversion Statute, 42 U.S.C. § 1320a-7b(a)(4), but granted Defendants' motion as to Relator's claims alleging FCA violations based on other alleged conduct.<sup>2</sup> (*See* Mem. & Order dated Aug. 10, 2018, Docket Entry No. 75.)<sup>3</sup> On February 22, 2021, the Court granted Defendants' motion for a certification of interlocutory appeal and issued a certificate of appealability on the grounds that the case presented an issue of first impression in the Second Circuit. (*See* Mem. & Order dated Feb. 22, 2021, Docket Entry No. 96.) Defendants' motion to dismiss and motion for partial summary judgment raised a novel question of law as to whether section 1320a-7b(a)(4) of the Benefits Conversion Statute could serve as the basis for Relator's misappropriation claims. (*Id.* at 13–22.)

On appeal, the Second Circuit found that the Benefits Conversion Statute is not violated where the recipient of a reimbursement payment is under no obligation to utilize the funds in any particular way. (Order of U.S. Court of Appeals for the Second Circuit dated Oct. 16, 2023 at 14–15, Docket Entry No. 108.) Accordingly, the Second Circuit held that “Relator’s claims

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unlawfully used St. Catherine of Siena Nursing Home’s Medicaid funding for improper purposes. (*See* Mem & Order dated Mar. 31, 2017 at 25–26, Docket Entry No. 40.)

<sup>2</sup> Defendant did not move to dismiss or for summary judgement as to Relator’s retaliation claims and the Court never addressed this claim. (*See* Mem. & Order dated Aug. 10, 2018; Defs.’ Mem. in Supp. of Mot. to Dismiss and for Partial Summ. J. as to Third Am. Compl. at 1 n.1, Docket Entry No. 29-9 (“[B]ecause retaliation claims generally are not susceptible to dismissal on a pre-Answer motion, [D]efendants will pursue dispositive relief as appropriate in the future.”); *see also* Defs.’ Mot. in Supp. of Mot. to Dismiss and for Partial Summ. J. as to FAC, Docket Entry No. 61-6 (moving to dismiss and for summary judgment only as to the misappropriation claims).)

<sup>3</sup> The Court reconsidered Defendants’ motion to dismiss and motion for summary judgment, and on July 13, 2020 denied both motions. (Mem. & Order dated July 13, 2020, Docket Entry No. 90.)

based on section 1320a-7b(a)(4) therefore fail as a matter of law.” (*Id.* at 15.) The Second Circuit remanded with instructions to dismiss Relator’s section 1320a-7b(a)(4)-based claims against Defendants. (Mandate of U.S. Court of Appeals for the Second Circuit dated Dec. 8, 2023, Docket Entry No. 109.)

The Court grants Defendants’ November 13, 2017 motion to dismiss and for partial summary judgment and dismisses Relator’s misappropriation claims based on section 1320a-7b(a)(4) with prejudice. The parties are directed to provide a status report regarding the retaliation claims on or before thirty days from the filing of this Order.

Dated: December 20, 2023  
Brooklyn, New York

SO ORDERED:

S/MKB  
MARGO K. BRODIE  
United States District Judge